

REMARKS

Applicants appreciate the indication of allowable subject matter.

I. CLAIMS OBJECTED TO

The final Office Action objected to Claims 3 and 59 as dependent upon a rejected base claim, but indicated that Claims 3 and 59 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Office Action maintained rejections of the base claim and intervening claims based on requirements allegedly derived from the Office's new, circa-2004 interpretation of case law under 35 U.S.C. § 101. Applicants disagree with the rationale, but solely to expedite prosecution, Claims 3 and 59 are rewritten herein in independent form including all of the limitations of the base claim and any intervening claims. Therefore, withdrawal of the objections is respectfully requested.

For the possible benefit of future cases, however, Applicants wish to comment on the rationale of the final Office Action, which argues that “methods, even ‘machine-implemented,’ constitute a mere manipulation of data that does not produce a useful, concrete and tangible result.” But everyone understands that machine-implemented data manipulation steps operate on data stored in electronic computer memory; changing data causes a change in the state of cells, gates, and transistors of the electronic memory; changing the state of these devices means, at the atomic level, that an electron charge is applied to certain semiconductor materials associated with particular memory bit locations and not to others; and this change in charge is a concrete and tangible result.

The Office Action appears to interpret “concrete and tangible” to mean “perceivable with the unaided human senses,” or requiring that the data “leave the machine” and affect some other device or thing that is so perceivable, but this interpretation is unsupported in the statutory

language cited in the Office Action or in case law. If one had an electron microscope available to peer at the gates of a memory device, the atoms constituting those gates, and the electrons charged at those atoms, one would see a concrete and tangible result of the manipulation of data. In a closely analogous case involving manipulation of digital signals, the Court of Appeals for the Federal Circuit held:

These claimed steps of “converting”, “applying”, “determining”, and “comparing” are physical process steps that transform one physical, electrical signal into another. The view that “there is nothing necessarily physical about ‘signals’ “ is incorrect. *In re Taner*, 681 F.2d 787, 790, 214 USPQ 678, 681 (CCPA 1982) (holding statutory claims to a method of seismic exploration including the mathematically described steps of “summing” and “simulating from”). The ... steps of [the] claimed method comprise an otherwise statutory process whose mathematical procedures are applied to physical process steps.

Arrhythmia Research Technology Inc. v. Corazonix Corp., 958 F.2d 1053, 22 USPQ2d 1033 (1992). For at least the foregoing reasons, Applicants believe that the Office’s rationale will not survive some future appeal in a different case, and should be reconsidered.

II. CLAIMS REJECTED UNDER 35 U.S.C. § 101

In Claims 5-24, which are among those claims for which the final Office Action maintains a rejection under 35 U.S.C. § 101, the dependency of certain claims is amended herein to depend from Claim 59. Thus, all of claims 5-24 now depend, directly or indirectly, from Claim 59. Since § 101 is the only issue with respect to Claims 5-24, and Claim 59 is amended to allowable condition to overcome the § 101 issue, Applicants respectfully submit that Claims 5-24 are in condition for allowance as amended.

A § 101 rejection also is maintained in the final Office Action with respect to Claims 25 and dependent Claims 26-45. Claim 25 is amended herein to introduce features are believed to overcome the § 101 issue, because the same features are found in Claim 59, which the Office Action indicates is allowable if rewritten. All of Claims 26-45 depend, directly or indirectly,

from Claim 25. Since § 101 is the only issue with respect to Claims 25-45, and Claim 25 is amended to allowable condition to overcome the § 101 issue, Applicants respectfully submit that Claims 25-45 are in condition for allowance as amended.

III. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, it is respectfully submitted that all of the pending claims, new, as originally filed, or as currently amended, are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a check for the petition for extension of time fee is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP



Christopher J. Palermo
Reg. No. 42,056

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2055 Gateway Place, Suite 550
San Jose, California 95110-1089
Telephone No.: (408) 414-1202
Facsimile No.: (408) 414-1076